



HOLDING COMPANY

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October 18, 2021

Anne E. Misback, Secretary
Board of Governors of the Federal Reserve system
20th Street and Constitution Avenue, NW
Washington, DC 20551

Via Electronic Submission

Re: Proposed Interagency Guidance on Third-Party Relationships: Risk Management
Docket No. OP-1752

The following letter is in response to the Proposed Interagency Guidance on Third-Party Relationships: Risk Management published on July 19th, 2021. We appreciate the opportunity to comment on the Proposed Guidance and provide the Federal Reserve our perspective. Attached in a separate document we address the questions raised in the proposal.

FirstBank is a privately-owned financial institution headquartered in Lakewood, Colorado. We were founded in 1963 and currently have over \$27 Billion in assets and approximately 110 branches throughout Colorado, Arizona and California. Our mission is banking for good for our customers, communities, and employees and a key strategy for accomplishing our mission is adhering to all applicable regulatory guidance.

We thank the Federal Reserve for taking our comments into consideration. If you have any questions about the information contained in this letter, please contact me at (303) 626-6723 or luis.gallardo@efirstbank.com.

Sincerely,

Luis B. Gallardo
EVP, Risk Management
FirstBank Holding Company

1. To what extent does the guidance provide sufficient utility, relevance, comprehensiveness, and clarity for banking organizations with different risk profiles and organizational structures?

The proposed guidance generally provides bank's with a good framework to identify risk that each third party relationship poses to the organization, as well as how banks can effectively manage and mitigate risk. We appreciate the fact that the proposed guidance is not prescriptive and allows each bank to tailor its third party risk management program to meet its risk profile.

3 & 4. In what ways, if any, could the proposed description of third-party relationships be clearer? To what extent does the discussion of "business arrangement" in the proposed guidance provide sufficient clarity to permit banking organizations to identify those arrangements for which the guidance is appropriate? What change or additional clarification, if any, would be helpful?

We agree with the assertion that a third-party relationship may exist despite a lack of a contract or remuneration. However, the definition provided with the guidance could be clearer with the inclusion of the content from FAQ #2, which provides a more detailed definition and examples of types of business arrangements. Finally, given the significant number of third party relationships that a bank may have when counting incidental vendors to the bank's operations, it would be appropriate to consider them out-of-scope for this guidance. For example, catering companies, building maintenance, and sponsorships do not present material risk to a bank's operations.

6. How could the proposed guidance better help a banking organization appropriately scale its third-party risk management practices?

The proposed guidance in several places emphasizes that a bank's third-party risk management program should be commensurate with its size, complexity, and risk profile. However, the guidance does not provide sufficient guidance to help smaller and mid-size institutions to develop a program suitable for its size and risk profile. The guidance could provide an example of a more basic framework for smaller banks, and outline the expectations of a more robust third-party risk management program for mid-size to larger institutions.

7. In what ways, if any, could the proposed guidance be revised to better address challenges a banking organization may face in negotiating some third-party contracts?

As pointed out in the guidance, there are scenarios in which it will be difficult for small and mid-size banks to negotiate contracts with larger third party relationships. Here are some specifics called out by the guidance that while may be ideal to negotiate, will and has presented challenges:

- Section 2. p: Conflicting Contractual Arrangements with Other Parties.
- Section 3: "A material or significant contract with a third party typically prohibits assignment, transfer, or subcontracting by the third party of its obligations . . ."

- FAQ 11: Contracts should stipulate when and how the third party will notify the bank of its intent to use a subcontractor as well as how the third party will report the bank regarding a subcontractor's conformance with performance measures, periodic audit results, compliance with laws and regulations, and other contractual obligations of the third party.

8. In what ways could the proposed description of critical activities be clarified or improved?

Overall we think the proposed guidance provides a good description of critical activities with its list of four impacts listed within section C. Additionally, the first listed impact, "could cause a banking organization to face significant risk if the third party fails to meet expectations", allows each institution to define significant risk based on their risk appetite. This could include regulatory, legal, or financial.

11. What additional information, if any, could the proposed guidance provide to banking organizations in managing the risk associated with third-party platforms that directly engage with end customers?

The guidance should highlight criticality of these third-party platforms that engage directly with customers due to the increased reputation, regulatory and operational risk. The bank should negotiate contracts to explicitly require the third-party provider to be compliant with the applicable banking rules and regulations.

12. What risk management practices do banking organizations find most effective in managing business arrangements in which a third party engages in activities for which there are regulatory compliance requirements? How could the guidance further assist banking organizations in appropriately managing the compliance risks of these business arrangements?

An effective vendor management program should have a risk assessment process to identify key risks, which includes compliance with regulatory requirements. When compliance risk is identified within a third party relationship, we engage our Compliance department to complete subject matter review with the relationship manager. Any issues uncovered during the review should be addressed and remediated before vendor onboarding. If issues are uncovered as part of an annual review, the Compliance department will work with Vendor Management and the relationship manager to remediate the issue with the third party vendor.

To further assist banks in appropriately managing the compliance risk of third party relationships, the guidance should require third party vendors who provide services that are subject to bank regulatory requirements to be compliant with applicable regulations. These expectations will allow banking organizations to negotiate contracts with these requirements, and require vendors to monitor their adherence to applicable regulations.

15. How could the proposed guidance be enhanced to provide more clarity on conducting due diligence for subcontractor relationships? To what extent would changing the terms used in explaining matters involving subcontractors (for example, fourth parties) enhance the understandability and effectiveness of this proposed guidance? What other practices or principles regarding subcontractors should be addressed in the proposed guidance?

The proposed guidance could be enhanced to clarify expectations on conducting due diligence for subcontractor relationships. In most cases it would be acceptable for the bank to evaluate a critical third party vendor's third party management program. If the review of due diligence documents reveals a key subcontractor, then the banking organization should conduct a more independent due diligence review. The guidance indicates that contracts should stipulate when and how the third party will notify the bank of its intent to use a subcontractor. Although this is ideal, small to mid-size banks often lack the leverage to require this of critical vendors.

18. To what extent should the concepts discussed in the OCC's 2020 FAQs be incorporated into the guidance? What would be the best way to incorporate the concepts?

The OCC's 2020 Frequently Asked Questions (FAQs) on Third-Party Relationships should be incorporated into the guidance as an exhibit at the end of the guidance.